

EXHIBIT 5

From: [Chung, Jaysen S.](#)
To: [Ryan Loveless](#)
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Subject: RE: WSOU v. Dell et al., Case Nos. 6:20-CV-00473-486; Revised List of Terms/Constructions
Date: Monday, February 8, 2021 10:03:40 PM
Attachments: [WSOU Dell et al. - Chart re Narrowed Proposed Claim Terms.pdf](#)

Ryan,

In view of the Court's order, Defendants identify the attached disputes to brief to the Court. With respect to those terms that Defendants do not include in this list, Defendants maintain their position that the proposed constructions (or indefiniteness) for those terms should be adopted. However, due only to the constraints imposed by the Court, Defendants are forced to select terms for construction at this time that do not include all terms that should be construed. Should those claims that implicate such terms remain in the case, Defendants reserve the right to seek relief from the Court on those terms.

With respect to the '921 Patent, in an effort to limit the terms presented to the Court, although Defendants believe their proposed constructions below are the appropriate constructions, in view of the limits on the number of terms for construction imposed by the Court, Defendants' are willing to accept WSOU's proposals for the following terms with the proposed modifications. We understand, based on the meet and confer process, that the addition to WSOU's Proposal of "and equivalent structures" was agreeable to WSOU. Please let us know if WSOU will agree to the remaining modifications.

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Proposal	WSOU's Proposal (with Defendants' edits)
"computing means for control of the nodes" (claim 1) / "computing means for controlling the node" (claims 9 & 17)	1, 9, 17	<p>This term is subject to 35 U.S.C. § 112, ¶ 6.</p> <p><u>Claim 1</u></p> <p>Function: control of the nodes</p> <p>Structure: Control plane 200 including CPU 206; and equivalent structures</p> <p><u>Claims 9 & 17</u></p> <p>Function: controlling the node</p> <p>Structure: Control plane 200 including CPU 206; and equivalent structures</p>	<p>Subject to means-plus-function construction.</p> <p>Function: control of the nodes</p> <p>Structure: CPU 206; and equivalent structures</p>
"means for fast propagation of node related information between the data plane means in each node and forwarding the information to the computing means in the network" (claim 1) / "means for fast propagation of node related information to and from the data plane means in other nodes in the network and forwarding the information to the computing means" (claims 9 & 17)	1, 9, 17	<p>This term is subject to 35 U.S.C. § 112, ¶ 6.</p> <p><u>Claim 1</u></p> <p>Function: [1] <i>fast propagation</i> of node related information between the data plane means in each node and [2] forwarding the information to the computing means in the network</p> <p>Structure: Switching fabric 214 and link interface 216, wherein the link interface comprises Fast Link State processor (FLSP) 218 and link failure database (LFDB) 228; and equivalent structures</p> <p><u>Claim 9 & 17</u></p> <p>Function: [1] <i>fast propagation</i> of node related information to and from the data plane means in other nodes in the network and [2] forwarding the information to the computing means</p> <p>Structure: Switching fabric 214 and link interface 216, wherein the link interface comprises Fast Link State processor (FLSP) 218 and link failure database (LFDB) 228; and equivalent structures</p>	<p>Subject to means-plus-function construction.</p> <p>Function: fast propagation of node related information between the data plane means in each node and forwarding the information to the computing means in the network</p> <p>Structure: 3:19-52 (switching fabric 214 and link interface 216; wherein the link interface comprises a fast link state processor (FLSP) 218 and a link failure database (LFDB) structure 228), 4:1-4, 7:18-20 (forwarding to CPU over link 236); and equivalent structures</p>
"means for fast propagation of link	1, 9, 17	<p>This term is subject to 35 U.S.C. § 112, ¶ 6.</p>	<p>Subject to means-plus-function construction.</p>

state information"	<p><u>Claims 1, 9, and 17</u></p> <p>Function: <i>fast propagation</i> of link state information</p> <p>Structure: Switching fabric 214 and link interface 216, wherein the link interface comprises Fast Link State processor (FLSP) 218 and link failure database (LFDB) 228; and equivalent structures</p>	<p>Function: fast propagation of link state information</p> <p>Structure: 7:60-8:3 (Fast Link State Processor (FLSP) 218, Fabric Interface 226 and Switch Fabric 214 structure for sending FSLMs), 8:21-27; and equivalent structures</p>
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In view of the 15 terms now in group 1, and our shift of the 435 to group 3, here is the breakdown of pages we wish to allocate.

Group	Terms	Opening/Response	Reply/Sur-reply
Group 1 (4 patents) 133 800 309 360	15	35	18
Group 2 (2 patents) 144 921	4	15	7
Group 3 (3 patents) 489 020 435	8	30	15
Group 4 (3 patents) 536 888 129	9	30	15

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Subject: RE: WSOU v. Dell et al., Case Nos. 6:20-CV-00473-486; Revised List of Terms/Constructions

Ryan – we will respond later today.

Brian A. Rosenthal

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Counsel:

In light of the Court's order, please provide your list of 36 terms across the cases by Monday, February 8, at noon CT. Also, OGP 3.2 prescribes the following page count for the groups.

Group	Opening/Response	Reply/Sur-reply
Group 1 (4 patents)	30	15
Group 2 (2 patents)	20	10
Group 3 (2 patents)	20	10
Group 4 (4 patents)	30	15

For opening and response briefs, this is a total of 100 pages. Please let us know how you wish to allocate those 100 pages between the 4 briefs. For example, if you want to move 10 pages from Group 4 to Group 1, we would consider that proposal, as long as the total pages is still 100 pages. We look forward to your timely reply by Monday noon. Time is of essence given we are drafting our brief now.

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Subject: RE: WSOU v. Dell et al., Case Nos. 6:20-CV-00473-486; Revised List of Terms/Constructions

Ryan,

As you are aware, there is a pending dispute with the Court as to the Group 1 patents. Defendants therefore will provide WSOU with a revised list as to Group 1 once the Court has resolved the dispute.

For Groups 2-4, below is a narrowed list of terms, with the '435 patent in Group 3 as proposed by Defendants. We are providing this narrowed set to comply with the Court's limits on claim construction terms. We reserve our right to pursue later in this case all claim construction arguments we previously identified, including indefiniteness arguments, that we are not able to identify here based on the Court's limits. Note also that we have simplified the "processing unit" term in the '435 patent.

A. GROUP 2 (8 terms)

1. '144 Patent

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"group of communication traffic"	1, 4, 11, 12, 14	"traffic in a VLAN or other identifiable communications group"	Plain and ordinary meaning
"V is a group identifier corresponding to the group of communication traffic"	1, 11, 14	Plain and ordinary meaning; but the group identifier cannot be a hash value based on packet fields such as source address and destination address	Plain and ordinary meaning
"contiguous communication path" / "the plurality of contiguous communication paths"	1, 11, 14	Indefinite	Plain and ordinary meaning

2. '921 Patent

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"computing means for control of the nodes" (claim 1) / "computing means for controlling the node" (claims 9 & 17)	1, 9, 17	This term is subject to 35 U.S.C. § 112, ¶ 6. Claim 1 Function: control of the nodes Structure: Control plane 200 including CPU 206; and equivalent structures Claims 9 & 17	Subject to means-plus-function construction. Function: control of the nodes Structure: CPU 206

		Function: controlling the node Structure: Control plane 200 including CPU 206; and equivalent structures	
“data plane means for forwarding packets between the nodes” (claim 1) / “data plane means for forwarding packets to other nodes in the network” (claims 9 & 17)	1, 9, 17	This term is subject to 35 U.S.C. § 112, ¶ 6. <u>Claim 1</u> Function: forwarding packets between the nodes Structure: Data plane 202 (distinct from the computing means) including switching fabric 214 and link interface 216; and equivalent structures <u>Claim 9 & 17</u> Function: forwarding packets to other nodes in the network Structure: Data plane 202 (distinct from the computing means) including switching fabric 214 and link interface 216; and equivalent structures	Subject to means-plus-function construction. Function: forwarding packets between the nodes Structure: 4:44-60 (link interface 216 and switching fabric 214)
“means for fast propagation of node related information between the data plane means in each node and forwarding the information to the computing means in the network” (claim 1) / “means for fast propagation of node related information to and from the data plane means in other nodes in the network and forwarding the information to the computing means” (claims 9 & 17)	1, 9, 17	This term is subject to 35 U.S.C. § 112, ¶ 6. <u>Claim 1</u> Function: [1] <i>fast propagation</i> of node related information between the data plane means in each node and [2] forwarding the information to the computing means in the network Structure: Switching fabric 214 and link interface 216, wherein the link interface comprises Fast Link State processor (FLSP) 218 and link failure database (LFDB) 228; and equivalent structures <u>Claim 9 & 17</u> Function: [1] <i>fast propagation</i> of node related information to and from the data plane means in other nodes in the network and [2] forwarding the information to the computing means Structure: Switching fabric 214 and link interface 216, wherein the link interface comprises Fast Link State processor (FLSP) 218 and link failure database (LFDB) 228; and equivalent structures	Subject to means-plus-function construction. Function: fast propagation of node related information between the data plane means in each node and forwarding the information to the computing means in the network Structure: 3:19-52 (switching fabric 214 and link interface 216 comprising a fast link state processor (FSLP) and a link failure database (LFDB) structure), 4:1-4, 7:18-20 (forwarding to CPU over link 236)
“means for fast propagation of link state information”	1, 9, 17	This term is subject to 35 U.S.C. § 112, ¶ 6. <u>Claims 1, 9, and 17</u> Function: <i>fast propagation</i> of link state information Structure: Switching fabric 214 and link interface 216, wherein the link interface comprises Fast Link State processor (FLSP) 218 and link failure database (LFDB) 228; and equivalent structures	Subject to means-plus-function construction. Function: fast propagation of link state information Structure: 7:60-8:3 (FLSP 218, Fabric Interface 226 and Switch Fabric 214 structure for sending FSLMs), 8:21-27.
“fast propagation”	1, 9, 17	Indefinite In the alternative this means “much faster than using the computing means, e.g. by using OSPF routing protocol”	Plain and ordinary meaning

A. GROUP 3 (10 terms)**1. '489 Patent**

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"the first set of port interfaces of the multi-chassis link aggregate"	1, 8, 15	Indefinite	Plain and ordinary meaning

2. '020 Patent

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"removing, at the network node, the protocol data of a portion of protocol layers from the received data stream" (claim 1) / "removes protocol data from a portion of protocol layers from a data stream" (claim 6)	1, 6	Indefinite	Plain and ordinary meaning
"a control unit which removes protocol data from a portion of protocol layers from a data stream received from the communication network via the second interface, the data stream comprising useful data and the protocol data, and switches a remaining data stream to be transmitted to one of the terminals via the first interface"	6	Indefinite In the alternative: this term is subject to 35 U.S.C. § 112, ¶ 6. Function: [1] removes protocol data from a portion of protocol layers from a data stream received from the communication network via the second interface, the data stream comprising useful data and the protocol data, and [2] switches a remaining data stream to be transmitted to one of the terminals via the first interface Structure: control unit CONTR executing function PHN, containing processes P1 to P3 and function SW; and equivalent structures	Plain and ordinary meaning
"bus system"	1, 6	"a network that does not include any active components such as switching nodes, gateways, routers, or bridges, wherein all nodes are connected to a single wire"	Plain and ordinary meaning

3. '435 Patent

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"setting the IPPC of one of the ports of one of said bridges within the MSTI to a lower IPPC when said port is part of the VLAN member set"	1, 8, 13	order of steps The setting of the IPPC to a lower IPPC must occur after the creation and configuration of the Multiple Spanning Tree Instances step and after the creation of the VLAN member sets step	Plain and ordinary meaning
"Multiple Spanning Tree Protocol (MSTP) engine"	3, 14	Indefinite	Plain and ordinary meaning
"processing unit for setting the Internal Port Path Cost (IPPC) of one of the ports of one of said bridges within the MSTI..."	8	This is subject to 35 U.S.C. § 112, ¶ 6. Function: setting the Internal Port Path Cost (IPPC) of one of the ports of one of said bridges within the MSTI... Structure: Indefinite	Plain and ordinary meaning
"among the last ones" / "among the	6, 10, 17	Indefinite	Plain and ordinary meaning

first ones"			
"ideally"	7, 11, 18	Indefinite	Plain and ordinary meaning
entirety of claims	9–11, 13–18	Indefinite	Plain and ordinary meaning

B. GROUP 4 (10 terms)

1. '536 Patent

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"bridge"	1, 12	"a network interface device that operates no higher than the data link layer"	Plain and ordinary meaning
"channel in a connection-based network"	1, 12	"one of the paths that has been established in a network for communications"	Plain and ordinary meaning
"means for reading priorities of data frames directed by the bridge to at least a first one of the bridge ports"	12	This term is subject to 35 U.S.C. § 112, ¶ 6. Function: reading priorities of data frames directed by the bridge to at least a first one of the bridge ports Structure: Indefinite	Subject to means-plus-function construction. Function: reading priorities of data frames directed by the drible [sic] to at least a first one of the bridge ports Structure: bridge, and equivalents thereof
"forwarding system configured to read a priority of a data frame to be forwarded onto the connection-based network by way of the first one of the ports, identify a service interface which the map indicates corresponds to the read user priority and forward the data frame over the channel in the connection-based network associated with the identified service interface"	1	This term is subject to 35 U.S.C. § 112, ¶ 6. Function: read a priority of a data frame to be forwarded onto the connection-based network by way of the first one of the ports, identify a service interface which the map indicates corresponds to the read user priority and forward the data frame over the channel in the connection-based network associated with the identified service interface Structure: Indefinite	Plain and ordinary meaning

2. '888 Patent

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"stackable trunk port"	1, 15	"trunk port supporting the Riverstone solution (i.e. the additional extension 802.1Q packet header)"	Plain and ordinary meaning
"backbone VLAN trunk"	1, 15	"data transport trunk links defined between stackable trunk ports on core routers"	Plain and ordinary meaning
"wherein the selection and association of at least one backbone VLAN ID with each one of the corresponding plurality of backbone VLAN trunks is undertaken irrespective of one of an in-use and a stand-by designation of each one of the plurality of backbone VLAN trunks and each one of the plurality of stackable trunk ports" (claim 1) / "wherein the association of the plurality of backbone VLAN IDs with the backbone VLAN trunk is undertaken irrespective of one of an in-use and a stand-by designation of the backbone VLAN trunk and the at least one stackable trunk port" (claim 15)	1, 15	"wherein the provisioning method ignores the designation of a backbone VLAN trunk as in-use or stand-by when associating the backbone VLAN ID with the backbone VLAN trunks (as opposed to, during association of VLANs with trunks, explicitly designating physical VLANs associated with a logical VLAN as in-use and explicitly designating other physical VLANs associated with the logical VLAN as back-up)"	Plain and ordinary meaning
"associating each of the backbone VLAN ID with each one of the plurality of backbone VLAN trunks"	1	Indefinite In the alternative: "associating each of the backbone VLAN ID with all of the backbone	Plain and ordinary meaning

		VLAN trunks"	
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3. '129 Patent

Claim Term, Clause, or Phrase	Claim(s)	Defendants' Construction	Plaintiff's Construction
"rate of change"	3	Plain and ordinary meaning; not an instantaneous value measured at a fixed point in time	Plain and ordinary meaning
"initiating a poll of resources in the nodes of the network by the management station in response to reporting from the node or a time interval being exceeded"	3	Both of these events trigger a poll	Plain and ordinary meaning

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Counsel:

Pursuant to the scheduling order's deadline to meet and confer to narrow terms in dispute and exchange revised lists of terms/constructions, WSOU has no revisions to its list or constructions.

WSOU's list of terms remains as the eleven (11) selected by both sides and presented to the Court's clerk in the spreadsheet dated February 2, 2021.

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